

09/928,546

**REMARKS**

Claims 2-5, 7, 9-13, 15-41 and 47-49 are rejected under 35 U.S.C. § 251 as being an improper recapture of broadened claims subject matter surrendered in the application for the patent upon which the present reissue is based.

Upon review of the prosecution history of the originally filed application, the Applicant notes that original claim 1 (claim 10 during the prosecution of the original application) which was allowed by the Examiner, included a number of clarifying recitations and features as discussed by the Examiner on page 3 of the pending official action of February, 11, 2003. These further recitations and features were not entered to overcome any specific prior art rejection but to clarify the claim language. In fact, little if any of the presented arguments relate in any manner to the recitations and features of claim 1.

The cancellation of the remaining claims 1-9 and 11 in the original prosecution was made solely in view of the allowability of claim 10 and solely to advance prosecution and allowance. Additionally, the subject matter of claims 1-9 and 11 in the original application was expressly canceled without prejudice or disclaimer of the subject matter therein, as specifically recited in the Applicant's response filed August 5, 1999. Moreover, a number of the pending claims in the present reissue contain certain limitations which result in narrower claims than the original allowed claim 1 in many respects. Therefore, the Applicant does not agree that the subject matter referred to by the Examiner was surrendered under 35 U.S.C. § 251. However, in order to be fully responsive to the raised matter, and to simplify the issues in the present case, the Applicant has nevertheless amended the currently pending claims to include the noted features and recitations.

Claims 23-31 and 41 are again rejected under 35 U.S.C. § 112, first paragraph, for the reasons noted in the official action. The inadequate written description rejection is acknowledged and respectfully traversed in view of the following remarks.

While the Applicant fully believes there is sufficient written description to support the objected to claim language in the above mentioned claims, the Applicant has slightly amended

09/928,546

claim 23 to more fully comport with the subject matter as set forth in claim 1, which is notably not rejected under 35 U.S.C. § 112, first paragraph. This added language relative to the predetermined stacking arrangement of the rack is believed to provide a clear and sufficient support to those of skill in the art to understand the claimed heating and cooling system. If the Examiner continues to disagree with the Applicant regarding this matter the Examiner is courteously invited to contact the undersigned Attorney of Record to discuss the same.

As discussed in the previous response of November 4, 2002, the Applicant reiterates that it is not clear what rejection, if any, the Examiner is making with respect to the heating and cooling system. As the Applicant understands the rejection, the Examiner alleges that it is unclear as to how the claimed heating and cooling system essentially operates. The Applicant points out that a thorough description of the heating and cooling air circulation system which details utilizing a heater and fan, a refrigeration unit and fan along with air directing baffles can be found in the Applicant's specification at columns 2-3, lines 61-66. The type of food to be dispensed to the consumers will dictate whether heating or cooling of the prepared food is necessary.

The present invention does not specifically relate to the heating and cooling of food which, in fact, could be performed by a number of known ways, but to a method or system for transporting and dispensing food in a state for consumption. Specifically, with respect to the rejected claims under 35 U.S.C. § 112, first paragraph, although the pending method claims recite the step of, ".....activating a heating and cooling means....." the pending claims do not recite any steps specifically directed to the "determination" of which portion of a tray needs to be warmed or maintained cool, nor under the particular condition of determining this when both heating and cooling units are operating at the same time. These are not believed to be specific limitations which are either express or inherent in the Applicant's claims. As the Applicant desires to be fully responsive to all grounds of rejection, if the Applicant has misunderstood this rejection, the Examiner is courteously requested to contact the undersigned attorney of record to discuss the same.

103-1117 AM

09/928,546

At any rate, whether such limitations are read into the pending claims or not, to the extent necessary to satisfy the written description requirement of 35 U.S.C. § 112, first paragraph, in view of the substantial and adequate disclosure of the Applicant's heating and cooling system as set forth above, there is more than sufficient detail and disclosure in the specification so as to allow one of skill in the art to make and or use the claimed invention without undue experimentation, and therefore the Applicant requests withdrawal of the inadequate written description rejection.

Claims 1-5, 7, 9-13, 15-41 and 47-49 are rejected under 35 U.S.C. § 112, second paragraph under the grounds of undue multiplicity of claims that is unreasonable in view of the scope of the Applicant's invention and the state of the art as set forth in MPEP 2173.05(n).

The Applicant, in a reply dated March 14, 2003, traversed this rejection. The Examiner, in a detailed action dated June 1, 2003, deemed the response to be not fully responsive for failure to provide "no more than twenty (20) claims, and no more than three (3) independent claims". The Applicant maintains the objections to the election requirement and reiterates the arguments with respect thereto. However, in order to be fully responsive the Applicant provides the above amended and new claims, which are believed to fully comport with the present election requirement. The Applicant thus elects the following claims: 1, 2-5, 9-12, 16-18, 23-28, 32, 41 and adds new claim 50, of which claims 1, 2 and 32 are independent claims.

The Applicant does not by any means cancel, disclaim or abandon the subject matter of any cancelled or withdrawn claims in this action should the Examiner maintain the present election requirement. Furthermore, in the event the Examiner maintains the election requirement Applicant requests a refund of the substantial fees paid on any withdrawn claims.

All the claims of the present reissue application are again rejected, under 35 U.S.C. § 102, as being anticipated in view of Colato et al. '736. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

09/928,546

As the Examiner is aware, in order to properly support an anticipation rejection under 35 U.S.C. § 102(b) the reference must disclose each and every limitation of the presently recited claims. Pending claim 1 includes the limitations of:

*preparing the food for consumption at a first location;*

*.....loading the maneuverable rack onto a refrigerated vehicle for transportation to a second remote location;*

Firstly, Colato et al. '736 fails to disclose any aspect relating to loading a maneuverable rack at a first food preparation location onto a ".....refrigerated vehicle.....". The Examiner alleges that column 2, lines 62-68 of the Colato et al. '736 reveals this feature, however, the Applicant respectfully disagrees for the following reasons.

Reading the disclosure in context, this passage of Colato et al. '736's provides, "...a refrigerated tray rack having means for heating certain of the food dishes on the trays therein as herein before described and transported by an appropriate vehicle.....". Colato et al. '736 here describes the movable refrigerated tray rack and the trolley Ca, but importantly there is no disclosure of a further vehicle, much less a further refrigerated vehicle as recited by claim 1. Colato et al. '736 may arguably disclose moving the refrigerated tray rack between two locations, however the description merely provides that Colato et al. '736 performs this function either (1) in the enclosure Ca, or (2) utilizing the apparatus 14 as shown in Fig. 9. In fact, either way, it is readily apparent that this description merely discloses that the trays, food and racks C are put in the refrigerated enclosure Ca, i.e., the "appropriate vehicle", and thus no further or secondary transfer vehicle is disclosed, taught or even suggested by Colato et al. '736. Based on this, the Applicant believes this portion of the Colato et al. '736 disclosure teaches explicitly away from a transfer vehicle or even a refrigerated transfer vehicle as recited by claim 1.

Claim 1 also recites:

*transferring the maneuverable rack, at the second location, into a moveable receptacle having at least one of heating and cooling means,.....*

09/928,546

It is important to remember that the pending method claims recite a multitude of steps relating to a novel method or system for dispensing food. A review of Colato et al. '736 fails to reveal any disclosure or even suggestion of these specifically recited steps, namely, the steps of (1) at a first location transferring the rack on a transfer vehicle and then (2) transferring the rack, at a second location, from the transfer vehicle to the movable receptacle. Notably, Colato et al. '736 indicates that the above discussed and explicitly claimed step cannot be accomplished because, ".....[t]he enclosure or cart with its tray rack or racks and complete trays within the same may be prepared with food at a central supply point and then conveyed to any desired location" (see column 2, lines 16-21). In other words, there cannot be a transfer at the second or "desired location" because the transfer to the refrigerated enclosure Ca is expressly described by Colato et al. '736 at the central supply point or first location.

Understanding that the present invention is an improvement over the system upon which the Colato et al. '736's device was intended to operate, a system which requires transfer of the enclosure, racks, trays and food, between the first and a second desired locations, the presently claimed invention is able to forego the use of the cart or enclosure Ca, for a substantial portion of the system, specifically for purposes of economy and feasibility.

In addition to the above, claim 1 also recites the steps of:

*removing the at least one maneuverable rack from the moveable receptacle; and*

*loading the at least one maneuverable rack back onto the transfer vehicle for transportation of the rack from the second location back to the first location.*

Again, based upon a review of Colato et al. '736, there is no disclosure of these steps anywhere in the accompanying description or drawings. Specifically with respect to these final recited steps of claim 1, again, there is no refrigerated vehicle in Colato et al. '736 and, in fact, there is no secondary transfer vehicle in Colato '736 at all! Only the rack carrier, or enclosure Ca, a fact which will be discussed in further detail below, is present. However, with respect to the above noted claim feature which expressly requires removal of the racks from the receptacle at the second location for loading onto the refrigerated vehicle for return to the food

09/928,546

preparation site, i.e., the first site, this enables the receptacle to be left at the second site whereas no such removal or separation of the cart Ca and the racks of Colato et al. '736 is expressly or inherently disclosed (except at the food preparation point).

The Examiner alleges that Colato et al. '736 col. 2 lines 22-37, discloses the above two claimed steps, in that once the meals on the trays have been consumed, the trays are returned to the racks which are returned to the first location by the transfer vehicle. Primarily, a review of this portion of Colato et al. '736 fails to reveal a transfer vehicle other than the enclosure Ca, or secondarily, that the racks are taken to any location in particular by a transfer vehicle. Most importantly, the Applicant believes that the Examiner is confusingly utilizing one element of the Colato et al. '736 reference i.e. the cart Ca—to cover both the transfer vehicle and separate receptacle, which are in fact two different devices and elements which perform two entirely separate functions and hence, provide two different limitations in the present claims.

Properly read in context, the portion of Colato et al. '736 cited by the Examiner at column 2, lines 22-37 should also include the initial recitation, namely, column 2, lines 16-21, "...[t]he enclosure or cart with its tray rack or racks and complete trays within the same may be prepared with food at a central supply point and then conveyed to any desired location and during such time all food on the tray remains refrigerated". Thus, the only transfer vehicle being discussed in at least this portion of Colato et al. '736 is actually the cart or enclosure Ca.

These are not unimportant distinctions, particularly in view of the crowded nature of the field and that Colato et al. '736, in fact, relates specifically to an APPARATUS FOR HEATING A FOOD ITEM WHILE RETAINING ITS MOISTURE AND NUTRITIONAL COMPONENTS, as stated by the title. The presently claimed invention specifically relates to a method, and the claimed method is not taught, suggested or disclosed by Colato et al. '736, and also not inferred by any methodology discussed in Colato et al. '736. That is, Colato et al. '736 relates to a method explicitly avoided by the presently claimed invention by ensuring that the receptacle remains at the second location, while the rack and trays are shuttled to and from the first location via the transfer vehicle.

7/23/03-11:17 AM

09/928,546

Turning now to claim 2, as also discussed above with respect to claim 1, claim 2 recites the steps of:

*at a first location:*

*.....providing a refrigerated transfer vehicle for transporting the rack, loaded with the at least one tray bearing the apportioned food, from the first location to a second location spaced from the first location;*

*at the second location:*

*.....transferring the rack from the transfer vehicle to a moveable receptacle at the second location;*

These steps are not disclosed, taught or suggested in any manner by Colato et al. '736 for the same reasons as set forth above with respect to claim 1. By way of further explanation, the claim 2 specifically recites two elements, namely, (1) a transfer vehicle and (2) a receptacle. No matter whether Colato et al. '736 disclose a transfer vehicle or a receptacle, and the Applicant adamantly maintains that Colato et al. '736 only discloses a moveable receptacle Ca, this applied reference does not teach, suggest or disclose both a refrigerated transfer vehicle and a moveable receptacle, nor the manner in which the two different devices are utilized together in the presently claimed method.

Independent claim 32 also specifically recites the limitations of the two different elements, namely, the transport vehicle and the receptacle, as discussed above:

*at a first location:*

*.....loading the rack, containing the at least one tray, onto a refrigerated transport vehicle for transportation to a second remote location;*

*at the remote location:*

*.....transferring the rack, from the transport vehicle to a moveable receptacle.....*

The Applicant reiterates that these steps are not disclosed, taught or suggested in any manner by Colato et al. '736 for the same reasons as set forth above with respect to claim 2. By way of further explanation, the Applicant specifically first claims loading the racks onto a transfer vehicle; and secondly transferring the racks to a receptacle at the remote location. No matter whether Colato et al. '736 disclose either a transfer vehicle or a receptacle, and the Applicant adamantly maintains that Colato et al. '736 only discloses a moveable receptacle Ca, this applied reference certainly does not disclose both a transfer vehicle and a receptacle. More

09/928,546

Importantly, nor does Colato et al. '736 disclose the method of utilizing the two different devices together for conveying the racks between, and with respect to, the first and second locations.

As discussed above, Colato et al. '736 fails to reveal any teaching, suggestion or disclosure relating to a ".....refrigerated transport vehicle". The Examiner indicated that column 2, lines 62-68 of the Colato et al. '736 disclosure reveals this feature however, the Applicant respectfully disagrees.

This passage merely discloses ".....a refrigerated tray rack having means for heating certain of the food dishes on the trays therein as herein before described and transported by an appropriate vehicle.....". Colato's prior disclosure describes the movable refrigerated enclosure Ca, but importantly there is no disclosure of a further refrigerated transfer vehicle! In fact, it is readily apparent that with the trays, food and racks in the refrigerated enclosure Ca, an appropriate vehicle would not necessitate a further refrigerated vehicle, and this besides the fact that a refrigerated transfer vehicle is not disclosed, the Applicant believes this portion of the Colato et al. '736 disclosure teaches explicitly away from a refrigerated transfer vehicle as recited in claim 21. Claim 18 also recites the limitations:

*.....removing the rack from the moveable receptacle;*

*returning the plurality of the trays and the rack back to the first location for reuse while leaving the receptacle at the second location.*

As discussed above with respect to the previous independent claims, there is no disclosure of these steps in the description or drawings of Colato et al. '736. Specifically with respect to these finally recited steps in claim 18, which expressly require the removal of the racks from the receptacle at the second location, this enables the receptacle to be left at the second site as specifically claimed, whereas no such removal or separation of the cart Ca and the racks of Colato et al. '736 is disclosed, or even in light of an inherent understanding of Colato's system at a second location is contemplated either expressly or inherently.

The Examiner also alleges that column 2, lines 22-37 of Colato et al. '736 disclose the above two steps, in that once the meals on the trays have been consumed, the trays are



09/928,546

returned to the racks which are returned to the first location by the transfer vehicle. Primarily, a review of this portion of Colato et al. '736's disclosure fails to reveal a transfer vehicle, or secondarily, that the racks are taken to any location in particular by a transfer vehicle. Most importantly, the Applicant believes that the Examiner is again confusingly utilizing one element of the Colato et al. '736 reference i.e. the cart Ca--to cover both the transfer vehicle and the separate receptacle, which are in fact two different elements and limitations in the present claims.

As previously discussed, properly read in context, the Colato et al. '736 passage cited by the Examiner, at column 2, lines 22-37, should also include the initial recitation, namely column 2, lines 16-21, ".....[t]he enclosure or cart with its tray rack or racks and complete trays within the same may be prepared with food at a central supply point and then conveyed to any desired location and during such time all food on the tray remains refrigerated". Thus, the Applicant believes that the only transfer vehicle being discussed in at least this portion of Colato '736 is actually the cart or enclosure Ca.

These are not unimportant distinctions, particularly in view of the crowded nature of the field and that Colato et al. '736, in fact, relates specifically to an APPARATUS FOR HEATING A FOOD ITEM WHILE RETAINING ITS MOISTURE AND NUTRITIONAL COMPONENTS, as stated by the title. The presently claimed invention specifically relates to a method, and the claimed method is not taught, suggested or disclosed by Colato et al. '736, and also not inferred by any methodology discussed in Colato et al. '736. That is, Colato et al. '736 relates to a method explicitly avoiding by the presently claimed invention by ensuring that the receptacle remains at the second location, while the rack and trays are shuttled to and from the first location via the transfer vehicle.

Lastly regarding claim 18, the Applicant points out that the further limitations directed to specifically leaving the receptacle at the second location while the rack is returned to the first location via the transport vehicle is specifically set forth, notably:

09/928,546

*.....returning the plurality of trays and the rack back to the first location for reuse while leaving the receptacle at the second location.*

In addition to the above discussed features, claim 32 recites another fundamental difference between Colato et al. '736 and the presently claimed invention, namely

*at the remote location:*

*.....activating at least one of a heating system and a cooling system to regenerate the apportioned food on the at least one tray on the rack that is positioned in the receptacle;*

The above claimed distinction is important in light of the Colato et al. '736 reference which describes a mechanism for transporting, rethermalizing and dispensing food on trays wherein a moveable refrigerated container is provided with racks for the holding trays. As explained in the previous response, each of Colato et al. '736's trays is provided with an individual associated heating apparatus that is fixedly mounted in the rack C, not in the enclosure or trolley Ca, and each heating apparatus has heating elements corresponding to hot food dishes on the tray. The hot food dishes are exposed to the heating elements to maintain the hot food dishes at a hot temperature while the cold food dishes are exposed to the refrigeration when in the container and are shielded from the heating elements, thereby keeping the cold food dishes at cold temperatures. In use, the loaded trays are brought to the refrigerated container and loaded into the racks therein and the heating apparatus of each tray is plugged into power wiring in the trolley Ca. The main point being that Colato et al. '736 only discloses the heating elements specifically being component parts of the rack C, and not of the trolley as recited by claim 32. These distinctions equally apply to most of the other pending claims

As none of the above noted specifically claimed steps are taught, disclosed or suggested in any manner by Colato et al. '736, the Applicant respectfully requests withdrawal of the raised anticipation rejection of the claims in view of Colato et al. '736.

Notably, claims 42-46 were cancelled by the previous Response of November 4, 2002 in favor of new claims 47-49, thus the Applicant believes the present obviousness rejection applies to claims 41 and 47-49. In view of the Examiner's requirement that Applicant reduce

09/928,546

the total number of pending claims to twenty, claim 41 remains, and the following discussion applies thereto.

As the Examiner is aware in order to properly combine references under a 35 U.S.C. § 103 rejection, each of the references must provide some disclosure, teaching or suggestion that would lead one of skill in the art to combine the references as suggested by the Examiner. Turning first to a combination of Stromqvist '650 and Pennington et al. '973, the Applicant notes that these references are each complete in and of themselves and disclose entirely different methods of heating and cooling previously prepared food. A thorough study of each reference reveals no teaching or suggestion in either one that would lead one of ordinary skill in the art to combine them. Notably, in Pennington et al. '973, column 2, line 58 through column 3, line 37, a detailed description of the compartment 14 and tray holding racks 24 describes strips of material projecting perpendicular from the walls of the compartment 14. It is readily evident from this description, as well as from Figs. 1-3, that these racks 24 are, in fact, not removable from the compartment 14 at all. Neither is there any discussion or suggestion or teaching that a removable rack and tray support would be beneficial or necessary.

Furthermore, the serving cart of Pennington et al. '973 is specifically designed to have an inventive dual temperature zone and is particularly constructed as set forth in column 2, line 35-57, having ".....a light weight single panel construction advantageously can be used to reduce the total weight of the cart and reduce material costs without substantial reduction in the effectiveness of the cart where the hot and cold zones are otherwise maintained according to the invention". The Applicant believes that this, in fact, teaches specifically away from the addition of a further or removable rack system such as in the present invention or in Stromqvist '650. Therefore, the Applicant believes that these references are not properly combinable and, in fact, teach specifically away from the combination alleged by the Examiner.

In addition, a combination of these references, even if proper, and such is adamantly not conceded, would still not meet the limitations of the presently claimed invention, most notably the specifically claimed method of transporting a rack via a transfer vehicle from

09/928,546

a first location to a second location and transferring the rack from the transfer vehicle to a movable receptacle at a second location as specifically claimed by the Applicant. Pennington et al. '973 reveals nothing with respect to a food delivery cycle other than the specific heating and cooling apparatus therein.

The Applicant also believes that Stromqvist '650 is improperly combined with Yerman '320 which, as set forth with respect to Pennington et al. '973 above, also merely recites a food service cabinet for holding food. Yerman '320 describes a cabinet having a shelf support system which can be dismantled from the cabinet to allow for removal and cleaning and/or adjustment. Again, as discussed with respect to Pennington et al. '973, this reference is believed to be complete in and of itself particularly with respect to the unique shelf support system which is easy to take out and clean. This shelf support system is not designed to hold trays outside of its combination with the storage container 20.

Again, as set forth above, even if it is combinable, in fact, with Stromqvist '650 and such is, again, not conceded hereby, there is no disclosure, suggestion or teaching of the Applicant's specifically claimed method of delivering a rack between a first and second location as particularly claimed.

Liebermann '935 is also believed to be complete in and of itself and so completely different from the Stromqvist '650 reference that no person of ordinary skill in art would combine the references, particularly as suggested by the Examiner. The Applicant notes that Liebermann '935 relates to an individual shelf which can either be heated or cooled depending on necessity. The Applicant notes that while each individual shelf might in fact, be removed, there is no moveable rack as particularly taught by Stromqvist '650 or even the presently claimed invention. Furthermore, even if the shelves could be defined as a moveable rack, the rack would have both heating and cooling means as described therein and claims 41-46 specifically recite the lack of these elements in combination with the rack. Therefore, again, even if Stromqvist '650 is properly combinable with Liebermann et al. '935, such a combination

09/928,546

would tend to teach that the rack should include the heating and cooling means and thus tends to teach specifically away from the claimed features of the presently recited invention.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Colato et al. 736, Stromqvist '650, Pennington et al. '973, Liebermann '935 and/or Yerman '320 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the applicant.

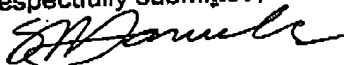
In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

09/928,546

In the event that there are any fee deficiencies or additional fees are payable, please  
charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

  
Scott A. Daniels, Reg. No. 42,462  
Customer No. 020210  
Davis & Bujold, P.L.L.C.  
Fourth Floor  
500 North Commercial Street  
Manchester NH 03101-1151  
Telephone 603-624-9220  
Facsimile 603-624-9229  
E-mail: patent@davisandbujold.com

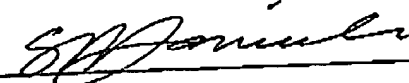
Official  
FAX RECEIVED

JUL 08 2003

GROUP 3600

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via facsimile to the  
United States Patent and Trademark Office on: July 7, 2003

  
\_\_\_\_\_

Scott A. Daniels

Type name of person signing certificate